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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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The Honorable John D. Dingell
House of Representatives

not make available to public reading

Dear Mr. Dingell:

Your letter of October 22, 1982, requested that we investigate the availability of the Economic Development Revolving Fund (the Fund) for the purpose of making direct loans to qualified businesses during the current fiscal year. In our view, the Fund is available for this purpose in its entirety during this fiscal year, although the Economic Development Administration (EDA) is not required to make any direct loans.

To resolve this question 1) in November we requested EDA's formal written comments on the Fund's availability, and 2) in December we met informally with EDA and Commerce Department representatives. At our December meeting EDA presented some preliminary analysis on why the Fund might not be available. Basically, it argued then that the lack of a current appropriation specifically earmarked for direct loans, coupled with the history of restrictions which have been placed on the Fund in annual appropriation acts, have put the Fund "off limits." The Commerce Department's formal response, dated February 4, 1983 (enclosed for your information), does not dispute our legal finding that the Fund is available. However, it cites the current appropriation, an analysis of congressional intent and the previous restrictions on the Fund as reasons why it "should not" use the Fund for direct loans this year or in the future.

The Fund was created by the Public Works and Economic Development Act of 1965 (PWEDA) to underwrite Federal financial assistance to businesses, and to public works and redevelopment projects. Section 203 of PWEDA, provides that:

"Funds obtained by the Secretary under section 201 [authorization for appropriations to carry out public works and business loan programs], loan funds obtained under section 403 [authorization of appropriations for redevelopment projects], and collections and repayments received under this Act, shall be deposited in an economic development revolving fund, * * * which is hereby established in the

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Treasury of the United States, and which shall be available to the Secretary for the purpose of extending financial assistance under sections 201, 202 and 403, and for the payment of all obligations and expenditures arising in connection therewith. * * * Section 203, PWEDA, 42 U.S.C. § 3143 (1976).

The Fund was set up as a public enterprise revolving fund. As such, it is authorized by law to receive payments from private sources and, without further legislative action, to use those monies to finance an ongoing cycle of business operations. OMB Cir. A-34, § 21.1 (1976). The initial capitalization of the Fund was the existing balance in the Area Redevelopment Administration (ARA) revolving fund. Over the past 18 years repayments on outstanding ARA and PWEDA loans have accumulated in the Fund. In addition, EDA has also used the Fund as a depository and disbursing point for its annual economic development assistance appropriations as directed by the Fund's enabling statute.

None of EDA's current \$168,500,000 lump sum appropriation for economic development assistance has been deposited in the Fund for disbursement in direct lending activities. EDA's reasons for this are explained below. Aside from any current appropriation, the existing repayment and collection generated balance in the Fund amounts to approximately \$130 million. Of this, about \$67 million is reserved in anticipation of potential defaults on PWEDA guaranteed loans, according to the information provided by EDA. Other transactions expected in the Fund this year include an interest payment to the Treasury of \$56 million (required by section 203, 42 U.S.C. § 3143), a transfer of \$30 million^{1/} from the Fund to EDA's lump sum economic development assistance appropriation (directed by Pub. L. No. 97-377, § 101(d), 96 Stat. 1830, 1867), and

^{1/} An additional transfer of \$2.5 million from the Fund to the lump sum appropriation is mentioned in the committee report but not in the statute. Compare H.R. Rep. No. 97-721 at 13 and Pub. L. No. 97-377, 96 Stat. 1831, 1866-70.

anticipated repayments of \$90 million. This would leave a balance of \$67 million which is potentially available for obligation this fiscal year to fund direct loans to businesses or for other authorized purposes.

As mentioned above, EDA has a lump sum appropriation for economic development assistance of \$168,500,000 plus \$30 million to be transferred to EDA's all purpose appropriation from the Fund. EDA has concluded that none of the lump sum appropriation will be processed through the Fund and used for direct loans because the committee reports accompanying the original appropriations bills stated that no appropriation was being provided for direct loans in fiscal year 1983. (See, H.R. Rep. No. 97-721, 97th Cong. 2d Sess., 12; and S. Rep. No. 97-584, 97th Cong., 2d Sess., 10.) While we would not question EDA's decision not to use any of its appropriation for direct loans under these circumstances, it is clear as a legal matter that EDA's current lump sum for economic development assistance is available for business loans this year, because economic development assistance is a broad purpose which includes direct loans to businesses.

Under the LTV doctrine, 55 Comp. Gen. 307 (1975), an agency is not bound as a matter of law to observe and effectuate all expressions of congressional intent as to how funds should be expended which are found only in committee reports or other legislative history. The law itself made an unrestricted lump sum appropriation. Instructions in committee reports or other sources of legislative history, including budget requests and other agency-created data, are not legally binding restrictions on the disposition of a lump sum. Id. at 319. As a matter of law, therefore, EDA does have funds available in the current appropriation for business loans.

As explained above, EDA has decided not to conduct a direct loan program with its appropriation because of the committee report language. However, the availability of the existing balance in the Fund is not dependent on the concurrent availability of an appropriation for direct loans. The general rule is that revolving funds exist outside the normal appropriations channels. Appropriations form the initial capital base of most revolving funds and may provide periodic infusions of additional money. Appropriations acts sometimes contain restrictions or extensions of spending authority such as the transfer of \$30 million from the Fund to the EDA all purpose economic assistance appropriation. See also,

33 Comp. Gen. 348 (1954). Once the law containing these conditions has expired, however, they have no further effect on the availability of the revolving fund. In fact, one reason commonly offered for creating a revolving fund in the first place is to free a particular Federal activity from some of the constraints of the appropriations process. Consequently, the fact that for FY 83 Congress did not use the annual appropriation act to direct the use of the revolving funds cannot be accorded any legal significance. Revolving funds must be presumed to be available according to the terms and conditions in the enabling legislation.

The segregation of monies into a revolving fund also means that the fund is immediately and continuously available for obligation to carry out its stated purposes. 35 Comp. Gen. 436 (1956). Among the purposes for which the Economic Development Revolving Fund is available is direct business loans. Unless there is a statutory restriction on a fund's use, neither an appropriation nor congressional approval is necessary to use existing monies in a revolving fund for the fund's stated purposes. 1 Comp. Gen. 704 (1922); 26 Comp. Dec. 295 (1919). See also, Joint Treasury-GAO Regulation No. 3, (1951), reprinted in 30 Comp. Gen. 597 (1951). Furthermore, unless restricted, the entire unobligated balance in a revolving fund is available for as long as the underlying legislative authority continues. 2 GAO Policy and Procedures Manual for the Guidance of Federal Agencies, § 11.8 (1978).

Based on the general rules recited above, we think it is clear that the availability of the repayment and collection generated balances in the Economic Development Revolving Fund is in no way dependent on the existence of an appropriation for the same purpose. However, for FY 83, there is an additional appropriation for economic development assistance which is legally available for the same purpose. Unlike the revolving fund, the appropriation remains available for obligation only for the balance of the fiscal year.

EDA points to a history of restrictions on access to the Fund to support its position that the existing balance in the Fund should not be used without specific authorization. Restrictions on the Fund have basically been of two types. From 1967 to 1973, EDA's annual appropriation contained a provision that prevented the Administration from using any appropriated monies to operate the Fund. This meant that the Fund continued to receive repayments, but that it could not serve as a

source of funds for PWEDA loans. From 1974 to 1978, no restrictions existed on the use of the Fund. In 1979, and 1980, obligation of the repayment and collection generated balances "under the 'Economic Development Revolving Fund' [could] not exceed \$75 million." Pub. L. No. 95-431, 92 Stat. 1021, 1021. During the next 2 fiscal years, annual dollar limitations on direct loans were expressed in the following terms: "During [a specified fiscal year] within the resources and authority available, gross obligations for the principal amount of direct loans shall not exceed [a specified number of] dollars." See, Pub. L. No. 96-536, § 101(o), 94 Stat. 3166, 3169 (incorporating the provisions of H.R. 7584, 96th Cong., 2d Sess., vetoed, December 13, 1980). See also, Supplemental Appropriations Act, 1982, Pub. L. No. 97-257, 96 Stat. 818, 819.

Basic authority to use the Fund for direct loans rests in the Fund's enabling legislation in accordance with the general principles discussed above. Accordingly, the complete absence of dollar/year restrictions in fiscal year 1983 causes all of the unobligated monies in the Fund to be available, not the opposite.

In fact, the previous restrictions have implicitly recognized that the existing balance in the Fund constituted a source of program funds in addition to the annual appropriation. There would otherwise have been no need for the complete restriction on access to the Fund during 1967-73. This remains true despite the fact that since 1974 the annual appropriations for business loans have been deposited in and processed through the Fund. The restricting and limiting terminology used in 1979-82 also appears to be premised on the availability of the funds in the Economic Development Revolving Fund unless specifically restricted.

For fiscal year 1983, EDA has not been directed by law to make direct loans from the unobligated balance in the Economic Development Revolving Fund. Hence, our opinion that the Fund is legally available does not translate into a requirement that EDA make any loans at all during 1983 or that it make any particular loan. Similarly, there is no requirement that EDA use any part of its FY 1983 lump sum appropriation for economic development assistance to make direct loans. As long as the funds are kept available for other authorized assistance purposes, the question you raised of a possible impoundment does not arise.

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We hope this proves helpful to you.

Sincerely yours,

MILTON J. SOCOLAR

For: Comptroller General
of the United States

Enclosure